

REMARKS

In the first Office Action, claims 1-35 were presented for examination. All of these claims were rejected, which rejections are respectfully traversed for the reasons set forth below.

Independent Claim 1
And Its Dependent Claims 2-3 And 5

Independent claim 1 as originally presented recited:

1. A multi-layered sports playing field for use over a base layer, said playing field including a top layer made of substantially artificial material simulating a natural playing surface such as grass and at least one padding layer positionable thereunder between said top layer and said base layer, said padding layer being porous and breathable to allow liquids and air to freely pass therethrough, said padding layer including a plurality of discrete beads of substantially elastic, resilient material wherein portions of adjacent beads abut one another and other portions of said adjacent beads are spaced from each other to create interstitial spaces therebetween and wherein substantially all of said adjacent beads are integrally joined together at the abutting portions. (emphasis added)

This independent claim 1 was rejected under 35 USC 103 as being unpatentable over (a) Wood, Jr. (US 5,085,424) in view of (b) Spinney, Jr. et al. (3,661,687) with the Examiner stating:

Claims 1-3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood Jr. (US 5,085,424) in view of Spinney, Jr. et al (US 3,661,687).

Wood teaches a sports surface meant for outdoor use with foam, as required in claim 2, closed cell, as in claim 3, polyethylene cushion, as in claim 5, disposed between a base material (claim 1 and abstract). Wood is silent as to the playing field having an artificial turf top or being composed of beads. Though the reference is silent as to the foam comprising beads it is well known in the art to use beads in foam padding (see Bainbridge et al. U.S. 6,357,054, cited below).

Spinney teaches an artificial grass sports surface with a shock-dispersing layer, a cushion layer, and a base (abstract and column figure 1).

It would be obvious to a person of ordinary skill in the art at the time of the invention to substitute the cushion of Wood with the structure of Spinney because they're both cushions for sports surfaces. (emphasis added)

This rejection is respectfully traversed.

First of all, Applicants respectfully ask if the rejection is based on (a) Wood in view of (b) Spinney or is it based on (a) Wood in view of (b) Spinney and further in view of (c) Bainbridge?

Second, to the extent it is based on (a) Wood in view of (b) Spinney as set forth in the first and last sentences of the rejection, it is respectfully noted that neither Wood nor Spinney discloses, teaches, or suggests:

a multi-layered sports playing field in which the padding layer is porous and breathable to allow liquids and air to freely pass therethrough and includes a plurality of discrete beads of substantially elastic, resilient material wherein portions of adjacent beads abut one another and other portions of said adjacent beads are spaced from each other to create interstitial spaces therebetween and wherein substantially all of said adjacent beads are integrally joined together at the abutting portions.

That is, to the extent Wood is silent as to the playing field being composed of beads as indicated by the Examiner, Spinney is equally as silent as to the playing field being composed of beads. Further, neither Wood nor Spinney teaches or suggests the desired result of having a padding layer of beads wherein the layer is porous and breathable. Wood and Spinney both appear to have nothing but conventional slabs of foam.

Applicants respectfully submit it is not proper to simply ignore the limitations of claim 1 and the deficiencies of Wood and Spinney and make the conclusionary statement that "it would be obvious to a person of ordinary skill in the art at the time of the invention to substitute the cushion of Wood with the structure of Spinnery because they're both cushions for sports surfaces."

To the extent the rejection is based on (a) Wood in view of (b) Spinnery and further in view of (c) Bainbridge, Applicants respectfully submit that the Examiner is clearly using Applicants'

own disclosure and teachings to rejects their claims. There is no teaching or suggestion in these three patents to so combine them to make the multi-layered sports playing field set forth in original independent claim 1. In fact, Wood clearly teaches away from beads as he describes his padding layer as being a foam "sheet" 11 (see line 57 of his column 2). Spinney even more clearly teaches away from beads and describes both of his layers 12 and 14 as being separate "sheets" (line 41 of his column 2 and lines 27-28 of his column 3) that are "laid down" on one another wherein:

It is critical and a key point of this [Spinney's] invention that the layer 12 and the layer 14 are not bonded together, and that the layer 12 "floats" or "rides" on the ... layer 14 (see lines 54-57 of his column 2).

Reconsideration and allowance of independent claim 1 are respectfully requested. Reconsideration and allowance of dependent claims 2, 3, and 5 are also respectfully requested.

Dependent Claims 9 And 26-33

In rejecting dependent claim 9, the Examiner stated in part:

Claim 9 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Wood in view of Spinney as applied to claim 1 above.

Wood in view of Spinney teach all the limitations of claim 1 as above ...

As respectfully pointed out in reference to claim 1, the combination of Wood in view of Spinney clearly does not teach nor make obvious all of the limitations of claim 1. Reconsideration and allowance of claim 9 as it depends from independent claim 1 is respectfully requested.

Similarly, dependent claims 26-33 were rejected on the same underlying premise as regards claim 1 and their reconsideration and allowance are respectfully requested. Additionally, it is noted that 103(a) by its own terms does not negate patentability by the manner in which the invention was made.

Dependent Claims 10-14, 16-19, And 34-35

These dependent claims were rejected based on the combination of Wood in view of Spinney as applied to claim 1 and further in view of Dury. As stated in part by the Examiner in rejecting dependent claims 10-14 and 16-19:

Wood in view of Spinney teach all the limitations of claim 1 as above, but are silent on the presence of feet or their properties.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the structure of Dury with the beads of Wood and Spinney since both are water permeable if unbonded. (emphasis added)

As respectfully pointed out in reference to claim 1, the combination of Wood in view of Spinney clearly does not teach nor make obvious all of the limitations of claim 1. In particular, there are no "beads of Wood and Spinney." The additional citation of Dury does nothing to cure this deficiency. Applicants respectfully submit that the Examiner is using Applicants' own disclosure to reject their claims. As for example, the Examiner's rejection not only calls for the foam sheets of Wood and Spinney to be replaced with beads but also for their bonded sheets to be unbonded. Reconsideration and allowance of claims 10-14 and 16-19 as they depend directly or indirectly from independent claim 1 are respectfully requested.

Similarly, dependent claims 26-33 were rejected on the same underlying premise as regards claim 1 and their reconsideration and allowance are respectfully requested. Additionally, it is noted that 103(a) by its own terms does not negate patentability by the manner in which the invention was made.

Dependent Claims 15 And 20-25

Dependent claims 15 and 20-25 were rejected based on the same combination of Wood in view of Spinney in view of Dury with claim 15 being rejected on this basic three patent combination and further in view of Silentwalk, claims 20-25 being rejected on this

basic three patent combination and further in view of Mellor, and claims 22-23 being rejected on this basic three patent combination and further in view of Layamn. In all cases, the fundamental premise of the rejections was:

Wood in view of Spinney teach all the limitations of claim 1 as above, but are silent on the [features for which the 4th patent is cited] ... (emphasis added)

As respectfully pointed out in reference to claim 1, the combination of Wood in view of Spinney clearly does not teach nor make obvious all of the limitations of claim 1. The additional citations taken alone or together do nothing to cure this deficiency. Reconsideration and allowance of claims 15 and 20-25 as they depend directly or indirectly from independent claim 1 are respectfully requested.

Dependent Claims 4 And 6-8

Dependent claims 4 and 6-8 were rejected as being unpatentable over Wood in view of Spinney and further in view of Bainbridge with the Examiner concluding:

It would be obvious to a person of ordinary skill in the art at the time of the invention to combine the two [?] teachings because each one [(i) Wood in view of Spinney? and (ii) Bainbridge?] is used as a padding to protect athletes. (bracketed portions added)

Applicants respectfully submit that the Examiner is clearly using Applicants' own disclosure and teachings to rejects their claims. There is no teaching or suggestion in these three patents to so combine them to make the multi-layered sports playing field set forth in original independent claim 1. In fact, Wood clearly teaches away from beads as he describes his padding layer as being a foam "sheet" 11 (see line 57 of his column 2). Spinney even more clearly teaches away from beads and describes both of his layers 12 and 14 as being separate "sheets" (line 41 of his column 2 and lines 27-28 of his column 3) that are "laid down" on one another wherein:

It is critical and a key point of this [Spinney's] invention that the layer 12 and the layer 14 are not bonded together, and that the layer 12 "floats" or "rides" on the ... layer 14 (see lines 54-57 of his column 2).

Reconsideration and allowance of dependent claims 4 and 6-8 are respectfully requested.

SUMMARY

It is respectfully submitted that all of the claims now present in the case (claims 1-35) are in condition for allowance and such action is respectfully requested. If, in the opinion of the Examiner, prosecution of this application could be expedited by a telephone interview, the Examiner is respectfully requested to contact the attorney for the applicants at the telephone number listed below.

A petition under Rule 1.136(a) accompanies this amendment.

Respectfully submitted,

DORR, CARSON & BIRNEY PC

By: W. Scott Carson

W. Scott Carson
Reg. No. 27,292
501 S. Cherry St., Ste 800
Denver, Colorado 80246
(303) 333-3010